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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 LYNN M. PACHECO,

9 Plaintiff,

10 v.

11 CAROLYN W. COLVIN, Acting  
12 Commissioner of Social Security,

13 Defendant.

CASE NO. C15-05848 BHS

ORDER AFFIRMING THE  
COMMISSIONER'S DECISION

14 **I. BASIC DATA**

15 Type of Benefits Sought:

16 ( ) Disability Insurance

17 (X) Supplemental Security Income

18 Plaintiff's:

19 Sex: Female

20 Age: 38 at alleged onset date

21 Principal Disabilities Alleged by Plaintiff: Lumbar degenerative disc disease, deformed  
22 feet, bursitis of the left hip

1 Disability Allegedly Began: May 4, 2009

2 Principal Previous Work Experience: Server, retail worker, and jewelry salesperson

3 Education Level Achieved by Plaintiff: High school

4 **II. PROCEDURAL HISTORY—ADMINISTRATIVE**

5 Before ALJ Michael C. Blanton:

6 Date of Hearing: February 11, 2014; hearing transcript AR 31-81

7 Date of Decision: September 25, 2014

8 Appears in Record at: AR 11-30

9 Summary of Decision:

10 The claimant has not engaged in substantial gainful activity since  
11 June 7, 2012, the application date. The claimant has the following  
12 severe impairments: lumbar degenerative disc disease, deformed  
13 feet, bursitis of the left hip. The claimant does not have an  
14 impairment or combination of impairments that meets or medically  
15 equals the severity of one of the listed impairments in 20 C.F.R. Part  
16 404, Subpart P, Appendix 1.

17 The claimant has the residual functional capacity to perform  
18 sedentary work except that she is limited to unskilled work.

19 The claimant has no past relevant work. Considering the claimant's  
20 age, education, work experience, and residual functional capacity,  
21 there are jobs that exist in significant numbers in the national  
22 economy that the claimant can perform. Therefore, the claimant has  
not been under a disability, as defined in the Social Security Act,  
since June 7, 2012, the application date.

Before Appeals Council:

Date of Decision: September 18, 2015

Appears in Record at: AR 1-6

Summary of Decision: Declined review

### III. PROCEDURAL HISTORY—THIS COURT

Jurisdiction based upon: 42 U.S.C. § 405(g)

Brief on Merits Submitted by (X) Plaintiff (X) Commissioner

### IV. STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), the Court may set aside the Commissioner’s denial of Social Security benefits when the ALJ’s findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005). “Substantial evidence” is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the ALJ. *See Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). “Where the evidence is susceptible to more than one rational interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.” *Id.*

### V. EVALUATING DISABILITY

The claimant, Lynn M. Pacheco (“Pacheco”), bears the burden of proving that she is disabled within the meaning of the Social Security Act (“Act”). *Meanel v. Apfel*, 172

1 F.3d 1111, 1113 (9th Cir. 1999). The Act defines disability as the “inability to engage in  
 2 any substantial gainful activity” due to a physical or mental impairment which has lasted,  
 3 or is expected to last, for a continuous period of not less than 12 months. 42 U.S.C.  
 4 §§ 423(d)(1)(A), 1382c(3)(A). A claimant is disabled under the Act only if her  
 5 impairments are of such severity that she is unable to do her previous work, and cannot,  
 6 considering her age, education, and work experience, engage in any other substantial  
 7 gainful activity existing in the national economy. 42 U.S.C. §§ 423(d)(2)(A); *see also*  
 8 *Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999).

9 The Commissioner has established a five-step sequential evaluation process for  
 10 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R.  
 11 §§ 404.1520, 416.920. The claimant bears the burden of proof during steps one through  
 12 four. *Valentine v. Comm’r, Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009). At step  
 13 five, the burden shifts to the Commissioner. *Id.*

## 14 VI. ISSUES ON APPEAL

- 15 1. Did the ALJ err in evaluating the medical evidence?
- 16 2. Did the ALJ err in assessing Pacheco’s credibility?
- 17 3. Did the ALJ err in evaluating the lay witness testimony?
- 18 4. Did the ALJ err in assessing Pacheco’s residual functional capacity  
 19 (“RFC”) and therefore in determining that she could perform other work at  
 step five?

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## VII. DISCUSSION

Pacheco appeals the Commissioner's decision denying her disability benefits, arguing that the ALJ committed several errors requiring reversal. Dkt. 11. The Court addresses each alleged error in turn.

### A. Evaluation of the Medical Evidence

Pacheco argues that the ALJ erred in evaluating the opinions of several medical professionals in the record. *See* Dkt. 11 at 2-11. The ALJ is responsible for determining credibility and resolving ambiguities and conflicts in the medical evidence. *See Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). In resolving questions of credibility and conflicts in the evidence, an ALJ's findings "must be supported by specific, cogent reasons." *Id.* at 725. The ALJ can do this "by setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings." *Id.*

The ALJ must provide "clear and convincing" reasons for rejecting the uncontradicted opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Even when a treating or examining physician's opinion is contradicted, that opinion "can only be rejected for specific and legitimate reasons that are supported by substantial evidence in the record." *Id.* at 830-31. In general, more weight is given to a treating physician's opinion than to the opinions of those who do not treat the claimant. *Id.* at 830. An examining physician's opinion is "entitled to greater weight than the opinion of a nonexamining physician." *Id.* at 830-31.

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1           **1.     Mark Layton, M.D.**

2           Pacheco argues that the ALJ erred by failing to acknowledge that Mark Layton,  
3 M.D., is a rheumatologist, instead referring to him as “Mr. Layton.” *See* Dkt. 11 at 4-5.  
4 However, Pacheco does not identify any resulting error that renders the decision  
5 unsupported by substantial evidence. *See id.* A plaintiff has the burden of establishing  
6 that an alleged error resulted in actual harm. *See Ludwig v. Astrue*, 681 F.3d 1047, 1054  
7 (9th Cir. 2012) (“The burden is on the party claiming error to demonstrate not only the  
8 error, but also that it affected his ‘substantial rights,’ which is to say, not merely his  
9 procedural rights.”) (citing *Shinseki v. Sanders*, 556 U.S. 396, 407-09 (2009)). The ALJ  
10 found that Dr. Layton failed to proffer a full diagnosis or evaluate trigger points. *See* AR  
11 22. Pacheco does not argue that Dr. Layton opined to any functional limitations that are  
12 lacking from the RFC. *See* Dkt. 11 at 4-5. Therefore, Pacheco establishes no harmful  
13 error.

14           **2.     Steve Gist, M.D.**

15           Pacheco argues that the ALJ erred by giving significant weight to the opinion of  
16 Steve Gist, M.D., while failing to provide Dr. Gist with copies of an MRI and treatment  
17 notes from other physicians. *See* Dkt. 11 at 6-8. However, Pacheco again fails to  
18 identify how this alleged procedural error also affected her substantial rights, leaving the  
19 ultimate disability determination unsupported by substantial evidence. *See id.* While  
20 Pacheco argues that Dr. Gist’s opinion should be entitled to less weight, she does not  
21 affirmatively establish that any other opinion should have been given more weight, such  
22 that the RFC is missing any specific functional limitations.

1 Pacheco also argues that the ALJ erred by failing to acknowledge that some of Dr.  
2 Gist's conclusions are inconsistent with his findings. *See* Dkt. 11 at 8. However,  
3 Pacheco manufactures this alleged inconsistency. While Pacheco states that the findings  
4 showed her to be unable to stoop, kneel, crouch, or crawl, Dr. Gist only found that she  
5 "was not able to perform [them] well" and limited her accordingly. *See* AR 598.  
6 Pacheco also concludes that findings of lower back pain limiting her bending and  
7 squatting are inconsistent with Dr. Gist's opinion that she could sit for six hours in an  
8 eight-hour workday, but no inherent conflict exists between the two. Pacheco does not  
9 establish harmful error.

10 **3. Keri Tarantino, Psy.D.**

11 Pacheco argues that the ALJ erred by noting within the evaluation of the opinion  
12 of Keri Tarantino, Psy.D., that Pacheco stated that her depression symptoms did not  
13 significantly impact her ability to work, when Pacheco does not have the awareness to  
14 know how significantly her impairments affect her. *See* Dkt. 11 at 8. However, the ALJ  
15 then concluded that despite Dr. Tarantino finding no significant mental health limitations,  
16 the RFC should limit Pacheco to unskilled work "to give the claimant the benefit of all  
17 doubt." *See* AR 23. Therefore, Pacheco establishes no harmful error.

18 **4. Robert Hoskins, M.D.**

19 Pacheco argues that the ALJ erred by giving greater weight to the opinion of  
20 nonexamining physician Robert Hoskins, M.D., who did not review all the medical  
21 evidence, than to the opinions of treating and evaluating physicians. *See* Dkt. 11 at 10-  
22 11. Dr. Hoskins completed a physical RFC assessment in November of 2012. *See* AR at

1 98-100. The ALJ noted that Dr. Hoskins' opinion was consistent with the evidence in the  
2 record, but because Dr. Hoskins could not possibly review subsequent medical records,  
3 the ALJ gave his opinion only "good weight." *See* AR 23-24. While Pacheco argues that  
4 Dr. Hoskins's opinion should be entitled to even less weight, she does not affirmatively  
5 establish that any other opinion should have been given more weight, such that the RFC  
6 is missing any specific functional limitations. *See* Dkt. 11 at 10-11. Therefore, Pacheco  
7 again establishes no harmful error.

## 8 **5. Other Medical Providers**

9 Pacheco describes in detail the findings of several other medical providers,  
10 arguing only that these findings "are consistent with Pacheco's testimony about her  
11 symptoms and limitations." *See* Dkt. 11 at 2-6, 9-10. As explained below, the ALJ gave  
12 sufficient reasons to discount Pacheco's testimony. *See infra*, VII.B. Plaintiff does not  
13 argue any other harmful error in the evaluation of this medical evidence, conceding that  
14 much of it "does not include clear opinions of functional limitations." *See* Dkt. 11 at 10.

## 15 **B. Evaluation of Pacheco's Credibility**

16 Pacheco argues that the ALJ erred in evaluating her credibility. *See* Dkt. 11 at 11-  
17 16. The Court disagrees.

18 Questions of credibility are solely within the control of the ALJ. *See Sample v.*  
19 *Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). The Court should not "second-guess" this  
20 credibility determination. *Allen v. Heckler*, 749 F.2d 577, 580 (9th Cir. 1984). To reject  
21 a claimant's subjective complaints, the ALJ must provide "specific, cogent reasons for  
22 the disbelief." *Lester*, 81 F.3d at 834 (citation omitted). The ALJ "must identify what



1 testimony is not credible and what evidence undermines the claimant's complaints." *Id.*;  
2 *see also Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993). Unless affirmative  
3 evidence shows the claimant is malingering, the ALJ's reasons for rejecting the  
4 claimant's testimony must be "clear and convincing." *Lester*, 81 F.2d at 834. That some  
5 of the reasons for discrediting a claimant's testimony should properly be discounted does  
6 not render the ALJ's determination invalid, as long as that determination is supported by  
7 substantial evidence. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001).

8 Here, the ALJ discredited Pacheco's testimony because her impairments were  
9 well-controlled by medications and her complaints were inconsistent with the medical  
10 evidence. *See* AR 19-22. An impairment that can be controlled by treatment or  
11 medication is not considered disabling. *See Warre v. Comm'r, Soc. Sec. Admin.*, 439  
12 F.3d 1001, 1006 (9th Cir. 2006); *see also Morgan v. Comm'r, Soc. Sec. Admin.*, 169 F.3d  
13 595, 599 (9th Cir. 1999) (an ALJ may discount a claimant's credibility on the basis of  
14 medical improvement), *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) (an ALJ  
15 may consider physicians' observations regarding the nature, onset, duration, and  
16 frequency of symptoms), *Regennitter v. Comm'r, Soc. Sec. Admin.*, 166 F.3d 1294, 1297  
17 (9th Cir. 1998) (a determination that a claimant's complaints are "inconsistent with  
18 clinical observations" can satisfy the clear and convincing requirement). Substantial  
19 evidence supports the ALJ's reasons. Multiple medical providers found, and Pacheco  
20 herself reported, that treatment greatly improved and controlled Pacheco's symptoms.  
21 *See, e.g.*, AR 367, 369, 409, 476, 489, 604, 606. Pacheco's allegations, including the  
22 inability to stand for more than 15 minutes at a time and the need to elevate her feet, were

1 also inconsistent with objective clinical findings. *See, e.g.*, AR 362, 371-72, 476, 479,  
2 562-63, 596-97, 605. While Pacheco identifies some findings that support her  
3 allegations, substantial evidence supports the ALJ's finding that the objective evidence as  
4 a whole was inconsistent with her complaints. *See Winans v. Bowen*, 853 F.2d 643, 644-  
5 45 (9th Cir. 1987) (court's role is not to reweigh the evidence). Therefore, the ALJ  
6 provided a clear and convincing reason supported by substantial evidence for discounting  
7 Pacheco's subjective complaints and did not err here.

### 8 **C. Evaluation of the Lay Witness Evidence**

9 Pacheco argues that the ALJ erred in evaluating the lay witness testimony of her  
10 friend Priscilla Watson. *See* Dkt. 11 at 16-17. The Court disagrees.

11 "In determining whether a claimant is disabled, an ALJ must consider lay witness  
12 testimony concerning a claimant's ability to work." *Stout v. Comm'r, Soc. Sec. Admin.*,  
13 454 F.3d 1050, 1053 (9th Cir. 2006). If an ALJ disregards the testimony of a lay witness,  
14 the ALJ must provide reasons "that are germane to each witness." *Nguyen v. Chater*, 100  
15 F.3d 1462, 1467 (9th Cir. 1996). Further, the reasons "germane to each witness" must be  
16 specific. *Stout*, 454 F.3d at 1054 (explaining that "the ALJ, not the district court, is  
17 required to provide specific reasons for rejecting lay testimony").

18 Here, the ALJ discounted the opinion of Ms. Watson because it was largely based  
19 on Pacheco's complaints, which the ALJ discredited, and inconsistent with the medical  
20 evidence. *See* AR 24. Where a claimant's testimony has been properly rejected, lay  
21 witness testimony that is similar thereto may be rejected for the same reasons used to  
22 reject the claimant's testimony. *See Valentine*, 574 F.3d at 685. Substantial evidence

1 supports the ALJ's finding that Ms. Watson's opinion was based on Pacheco's subjective  
2 pain complaints. *See* AR 266. Therefore, the ALJ provided a germane reason to discount  
3 Ms. Watson's testimony.

4 **D. The ALJ's RFC and Finding at Step Five**

5 Pacheco argues that the ALJ's RFC and finding at step five that Pacheco could  
6 perform other work were not supported by substantial evidence due to the errors alleged  
7 above. *See* Dkt. 11 at 17-18. However, the Court found no error by the ALJ in  
8 evaluating the medical evidence, Pacheco's testimony, or the lay witness evidence. *See*  
9 *supra*, VII.A., B., C. Therefore, the RFC and resulting step-five finding are supported by  
10 substantial evidence and not in error.

11 **VIII. ORDER**

12 Therefore, it is hereby **ORDERED** that the Commissioner's final decision is  
13 **AFFIRMED**.

14 Dated this 16th day of August, 2016.

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18 BENJAMIN H. SETTLE  
19 United States District Judge  
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